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82 - 1976

NO._____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner

V.

JOYCE GLASS McCRARY

Respondent

APPENDIX

TO THE PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

OF

CHARLES A. GRADDICK
ATTORNEY GENERAL OF ALABAMA

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
250 Administrative Building
64 North Union Street
Montgomery, Alabama 36130
(205) 834-5150

ATTORNEYS FOR PETITIONER

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UNITED STATES

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APPENDIX "A"

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1981-82

8 DIV. 636

Joyce McCrary

v.

State

Appeal from Jackson Circuit Court

DeCARLO, JUDGE

Possession of a counterfeit substance; ten years.

The State's evidence proved that two Scottsboro police officers, armed with a search warrant, went to appellant's residence, showed her the warrant, and told her they were authorized to search for Quaaludes or methaqualone. Upon

reading the warrant, appellant replied, "All that's here are those old fake pills," or "That's those old pills I have in the back room," or words to that effect. The appellant then brought out a bottle containing 415 white pills stamped "LEMMON 714" and scored on the back.

One of the officers familiar with the appearance of Quaaludes testified that the pills looked exactly like those containing the controlled substance to him. A preliminary analysis of the pills at Scottsboro police headquarters, however, indicated they did not contain the controlled substance methaqualone. The toxicologist's analysis, and later testimony, confirmed the finding that the capsules did not contain methaqualone or any other controlled substances, but compounds resembling aspirin and antihistamine.

An official of the Lemmon Corporation testified that his company manfactured a drug containing methaqualone, under the trade name "Quaalude." The pill is stamped "LEMMON 714" and scored on the reverse side. He testified that the pills found at appellant's residence were not manufactured by his company although they were "a very good imitation." He also stated that Lemmon had not authorized anyone to make a facsimile Quaalude.

I.

Appellant claims that her conviction should be reversed because § 20-2-70(b) of the Alabama Code 1975, was misconstrued to apply to her, or, if properly construed in its application to her, is unconstitutional.

Read in conjunction with the relevant prohibition of subsection (a),

§ 20-2070(b) provides that "any person who [possesses] a counterfeit substance enumerated in schedules I through V is guilty of a felony. ..." "Counterfeit substances" is defined in § 20-2-2(7) as follows:

> "Substances which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured distributed or dispensed the substance."

Appellant's first argument is one of statutory construction. She contends that there are no "counterfeit substance[s] enumerated in schedules I thorugh V; and that because all the drugs listed there are genuine controlled substances, the prohibition of the statute is meaningless. Next, she claims

that, since she was indicted for possession of a "counterfeit controlled substance" rather than for possession of a "counterfeit substance," the indictment does not apply to the pills in question here.

According to appellant's argument, a "counterfeit substance" is an innocent compound made to look like a controlled drug (an aspirin resembling a Quaalude), while a "counterfeit controlled substance" is one controlled drug made to look like another (heroin fashioned to resemble a Quaalude).

While we acknowledge the ambiguity of the statute, in our judgment both of these arguments are answered by a review of the legislative history and judicial construction of § 20-2-70(b) and its predecessor.

The predecessor to the current statute set out a prohibition on "counterfeit drugs" rather than on "counterfeit substances." See 1967 Ala. Acts 33, No. 252, § 1(2) (August 24, 1967). However, apparently in response to the holding of Vann v. State, 44 Ala. App. 664, 219 So. 2d 649 (1969), that section was repealed and replaced by § 20-2-70(b). See 1971 Ala. Acts 2374, No. 1407 (September 16, 1971).

In Vann, the court determined, based on the same reasoning that appellant now advances, that an indictment for possession of a "counterfeit drug" was insufficient unless it named two controlled substances: the drug possessed and the drug it was supposed to resemble. Thereafter, evidently in order to remedy the defect announced by the Vann court, the legislature altered the wording of

the section to read "counterfeit substance." Perhaps a more precise wording would have been "counterfeit of a substance."

In any event, based on the change in wording of the statute, presumedly in response to the judicial determination that a "counterfeit drug" meant one controlled substance made to look like another, we believe the legislature's intent in drafting § 20-2-70(b) was to proscribe the possession, sale, etc., of any substance (controlled or uncontrolled) which is a facsimile or imitation of a particular, identifiable controlled substance.

In view of our disposition of this appeal, based upon appellant's next argument, it is unnecessary to determine the sufficiency of the indictment.

II.

Appellant contends that § 20-2-70(b) is unconstitutionally vague and overbroad. While the statute does not offend the doctrine of overbreadth, it is, in our judgment, impermissibly vague as it applies to possession of a counterfeit substance.

The overbreadth doctrine derives from the First Amendment, see Young v. American Mini Theaters, 427 U.S. 450, 96 S. Ct. 2440, 47 L. Ed. 2d 81 (1976); Parker v. Levy, 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974), and serves to invalidate legislation so sweeping that, along with its allowable proscriptions, it also restricts constitutionally-protected rights of free speech, press, or assembly, see e.g., Coates v. Cincinnati, 402 U.S. 611, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971). Since

there are no First Amendment rights at stake here, the overbreadth doctrine does not apply. See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., ____ U.S. ____, 102 S.Ct. 1186, 1192 n. 9, ____ L.Ed.2d ____ (1982).

The doctrine of vagueness, on the other hand, originates in the due process clause of the Fourteenth Amendment, see Lanzetta v. New Jersey, 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 (1939), and is the basis for striking down legislation which contains insufficient warning of what conduct is unlawful, see United States v. National Dairy Products Corporation, 372 U.S. 29, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963).

Void for vagueness simply means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is

proscribed. United States v. Harriss, 347 U.S. 612, 617, 74 S.Ct. 808, 98 L.Ed. 989, 996 (1954). A vague statute does not give adequate "notice of the required conduct to one who would avoid its penalties," Boyce Motor Lines v. United States, 342 U.S. 337, 340, 72 S.Ct. 329, 330, 96 L.Ed. 367, 371 (1951), is not "sufficiently focused to forewarn of both its reach and coverage," United States v. National Dairy Products Corporation, 372 U.S. at 33, 83 S.Ct. at 598, 9 L.Ed.2d at 566, and "may trap the innocent by not providing fair warning," Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222, 227-28 (1972).

As the United States Supreme Court observed in Winters v. New York, 333 U.S. 507, 68 S.Ct. 665, 92 L.Ed. 840 (1948):

> "There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment. The vagueness may be from uncertainty in regard to persons within the scope of the act, or in regard to the applicable tests to ascertain guilt."

333 U.S. at 515-16, 68 S.Ct. at 670, 92 L.Ed.2d at 849-50 (citations omitted).

The Winters Court overturned a conviction for possession with intent to sell magazines "devoted to the publication and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime." Id. Noting that the provision contained no "ascertainable standard of guilt," the Court determined that "[w]here a statute is so vague as to make criminal an innocent act, a conviction

under it cannot be sustained." 333 U.S. at 520, 68 S.Ct. at 672, 92 L.Ed. at 852.

Citing Winters v. New York, the Alabama Supreme Court struck down, as unconstitutionally vague, an act punishing "any male who gazes into any place of abode, not his own or under his control, which is occupied by a female," in Kahalley v. State, 254 Ala. 482, 48 So. 2d 794 (1950). The court commented that the statute

> "marks no line between lawfulness and criminality, condemning all acts alike of the kind specified and as applied, would affect innocent beings in the ordinary pursuits of life. It leaves open the widest conceivable inquiry, the scope of which no one could foresee and the results of which no one could foreshadow and adequately guard against."

254 Ala. at 483, 48 So. 2d at 795.

Later, in Esco v. State, 278 Ala. 641, 179 So. 2d 766 (1965), the Alabama

court invalidated that portion of an enactment penalizing "any person who changes or alters his name to conceal his identity," as a uncertain and indefinite. The court observed that every name change is accomplished to conceal identity, and in the absence of a requirement of fraudulent intent, the statute penalized "conduct ... which could not be proscribed as criminal." 278 Ala. at 645, 179 So. 2d at 770.

Like the Kahalley court which listed numerous instances of innocent activity the "Peeping Tom" statute might penalize (e.g., the postman trying to deliver a package, who peeps inside to see if anyone is home; the concerned neighbor who smells smoke and looks inside to see if he can help), the Esco court also demonstrated how the "name change"

statute could include blameless conduct (e.g., the author who uses a pen name; the undercover detective who assumes an alias to ferret out crime).

Similarly, § 20-2-70(b) "marks no line between lawfulness and criminality," Kahalley v. State, supra. It proscribes the possession of a substance which, by its nature, is essentially harmless. A "counterfeit substance" becomes injurious to the public health, safety or welfare only with the addition of a specific intent on the part of its possessor to pass it off or to represent it as genuine.

Generally, all criminal statutes must contain the element of scienter. See Morissette v. United States, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288 (1952); Rogers v. State, 23 Ala.App. 149, 122 So. 308 (1928), "The existence of a mens rea

is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence." Dennis v. United States, 341 U.S. 494, 500, 71 S.Ct. 857, 95 L.Ed. 1137, 1147 (1951).

Although a state may create strict liability offenses, the power to do so is limited by "the constitutional command that no person can be 'deprived of life, liberty, or property, except by due process of law.'" Walker v. State, 356 So. 2d 672, 673 (Ala. 1977); see Ala. Const. Art. I, § 6 (1901); Smith v. California, 361 U.S. 147, 80 S.Ct. 215, 4 L.Ed.2d 205 (1959).

In Walker v. State, supra, the Alabama Supreme Court recognized the State's authority under the police power "to impose strict liability in connection with a variety of regulatory statutes for what are commonly called 'public welfare

offenses,'" 356 SO. 2d at 673, but it held that the Alabama Controlled Substances Act was not one of those statutes.

The court observed that, because the penalties for violation of the act were severe (two or fifteen years' imprisonment and a fine up to $25,000), criminal sanctions could be imposed under the act "only for blameworthy conduct." 356 So. 2d at 674. It determined that knowledge must be an essential element of illegal possession of a controlled substance.

In appelant's case, we are not dealing with illegal possession of a controlled substance, but with illegal possession of items resembling a controlled substance. Thus, some mental element other than simple knowledge of the resemblance must be present in order

to make possession of the substance "blameworthy." See Gasser v. Morgan, 498 F.Supp. 1154, 1166 (N.D. Ala. 1980). We believe, at the minimum, specific intent to represent the substance as genuine is necessary.

The lack of a specific intent requirement in the statute becomes even more apparent in view of the legislative history of the enactment. Act Number 1407, 1971 Ala. Acts 2378 (September 16, 1971) (codified at Ala. Code §§ 20-2-2 et seq.) states the following purposes:

> "To provide a Uniform Alabama Controlled Substance Act for preventing drug abuse and drug dependence, to standardize all laws in this state to be in conformity with the new Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and to repeal existing state statutes in conflict."

The federal counterpart of § 20-2-70(b) provides in pertinent part,

the following:

> "(A) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -
>
> . . . .
>
> "(2) to create, distribute, or dispense, or posses with the intent to distribute or dispense a counterfeit substance."

21 U.S.C. § 841 (1970) (emphasis added). The federal definition of "counterfeit substance" is virtually identical to Alabama's definition of the term, except that, after the final word of the Alabama definition at § 20-2-2(6), the United States Code provision adds the following:

> "and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser."

21 U.S.C. § 802(7) (1970). The emphasized language of both the penalty

provision and the definitional section in the United States Code indicates that the federal statutes do not suffer from the same vagueness problems as the Alabama statutes. Section 841 requires specific intent. Section 802(7) requires not only some resemblance to a controlled substance or its container, but a resemblance which "thereby falsely purports or is represented to be" the genuine article.

Because the Alabama statute sets out no scienter requirement, it fails to give fair warning to someone in appellant's position of the type of conduct which will be considered criminal. Furthermore, because the definition of the term "counterfeit substance" is so uncertain that it does not distinguish between innocently or inadvertently mis-labelled substances

and those which, by their incorrect markings, purport -- or are held out -- to be the genuine article, the statute provides no "ascertainable standards of guilt" and "may trap the innocent." Winters v. New York, supra; Grayned v. City of Rockford, supra.

In our judgment § 20-2-70(b), as it pertains to possession of counterfeit substances, is unconstitutionally vague for its failure to specify either the "intent" of the possessor or the "purpose" of the mismarked substance which will be deemed criminal. See Winters v. New York, 333 U.S. at 519, 73 S.Ct. at 672, 92 L.Ed at 851-52; Esco v. State, supra; Kahalley v. State, supra.

We note that the recent holding of the United States Supreme Court in Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., supra, though not

based on a criminal statute, supports our conclusion that specific intent is a necessary ingredient for fair warning in a criminal provision. In Hoffman Estates, the Court had before it a vagueness challenge to an Illinois regulatory ordinance requiring a license to sell drug paraphernalia.

The test applied by the Court to the Illinois enactment was whether the defendant merchandiser of drug-related items had adequate notice that its display of paraphernalia was regulated by an ordinance requiring a license for the following:

> "any items, effect, paraphernalia, accessory or thing which is designed or marketed for use with illegal cannabis or drugs...."

Hoffman Estates, Appendix (emphasis added). Focusing on the emphasized portion of the ordinance, the Court held

that the enactment

> "requires scienter, since a retailer could scarcely 'market'items 'for' a particular use without intending that use. Under this test Flipside had ample warning that its marketing activities required a license."

102 S.Ct. at 1195. The Court also observed:

> "[A] scienter requirement may mitigate a law's vagueness, especially with respect to the adequate of notice to the complainant that his conduct is proscribed."

102 S.Ct. at 1193.

It is significant that the test of "ample warning" was satisfied by a scienter requirement in Hoffman Estates since that case dealt with a business regulation carrying only "quasi-criminal" sanctions, 102 S.Ct. at 1194, whereas the case before us concerns a purely criminal statute with "severe penalties," Walker v. State, supra. Acknowledging that the

test it applied to the Illinois ordinance was "less strict" than one it would apply to a criminal statute, 102 S.Ct. at 1193, the Court recognized that:

> "The degree of vagueness that the Constitution tolerates - as well as the relative importance of fair notice and fair enforcement - depend in part on the nature of the enactment."

102 S.Ct. at 1193.

We therefore hold, based on Walker v. State, supra, and the line of vagueness cases decided by the Alabama and United States Supreme Courts, that the statute under review here does not provide sufficient warning of what conduct is prohibited, and it is thereby unconstitutionally vague.

We have no choice except to reverse and remand this case for the constitutional infirmities noted. Although a court may cure the vagueness

of a statute by interpreting it to include a specific intent when none is required by the literal wording of the enactment, see United States v. International Minerals and Chemical Corporation, 402 U.S. 558, 91 S.Ct. 1697, 29 L.Ed.2d 178 (1971); Boyce Motor Lines v. United States, supra; Gasser v. Morgan, 498 F. Supp. 1154 (N.D. Ala. 1980), it may imply the necessary intent only if it determines that the legislature intended a specific mens rea to be an element of the crime, United States v. Balint, 258 U.S. 250, 42 S.Ct. 301, 66 L.Ed. 604 (1922). See also Morissette v. United States, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288 (1952).

In the case before us, we must conclude, based on the history of the Controlled Substances Act, that the legislature did not intend to include

the element of intent. As Judge Bowen, writing for this court in State v. Spurlock, 393 So. 2d 1052 (Ala.Crim.App. 1981) observed:

> "Alabama adopted the substance of the major provisions of the Uniform Act .... This section was an addition to the Uniform Act. In making, it a part of Alabama's 'uniform act,' the legislature had the opportunity to conform it to the language of the various penal provisions within the Uniform Act. This omission, when considered in the context of the entire act, makes it clear that it was the intention of the legislature not to include any element of intent, willfulness or knowledge. ... Since the intent of the legislature is clear, this Court cannot declare it otherwise."

393 So. 2d at 1055, 1058.

Since Alabama's act parallels the federal legislation, and one of its stated goals is "conformity with the Federal [Act]" 1981 Ala. Acts 2378, No. 1407, supra, we must presume that any

non-conformity was purposeful, and the legislature did not intend to add the element of specific mens rea to the statute.

We note, without expressing any opinion of its validity, the existence of an act recently passed by the legislature entitled the "Imitation Controlled Substances Act" which appears to be directed at the same subject matter as that addressed in § 20-2-70(b). See 1982 Ala. Acts _____, No. 426 (May 12, 1982).

For the foregoing reasons, the judgment of conviction is reversed, and the cause remanded to the Jackson Circuit Court.

REVERSED AND REMANDED.

All the Judges concur.

October 12, 1982

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

8 Div. 636

Joyce Glass McCrary

v.

State

Appeal from Jackson Circuit Court
Number CC-81-316

IT IS ORDERED that the application for rehearing be and the same is hereby overruled in the above-styled cause.

WITNESS, Mollie Jordan, Clerk of the Court of Criminal Appeals, this 12th day of October, 1982.

/s/ Mollie Jordan
CLERK, COURT OF CRIMINAL APPEALS OF ALABAMA

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)
)
)

I, Mollie Jordan, Clerk of the Court of Criminal Appeals, do hereby certify that the foregoing contains a full, true and correct copy of the Joyce Glass McCrary v. State, Jackson County Circuit Court Number CC-81-316, 8 Div. 636, on October 12, 1982, as the same remains of record and on file in this office.

WITNESS, Mollie Jordan, Clerk of the Court of Criminal Appeals, this 10th day of May, 1983.

/s/ Mollie Jordan
CLERK, COURT OF CRIMINAL
APPEALS OF ALABAMA

COURT OF CRIMINAL APPEALS

STATE OF ALABAMA

P. O. Box 351

MONTGOMERY 36101

April 18, 1983

JOHN O. HARRIS
Presiding Judge

MOLLIE JORDAN
Clerk

JOHN C. TYSON, III

JOHN P. DeCARLO

JOHN G. BOOKOUT

WILLIAM M. BOWEN, JR.

Judges

Honorable Joseph G. L. Marston, III
Assistant Attorney General
64 North Union Street
Montgomery, Alabama 36130

Dear Mr. Marston:

RE: Joyce Glass McCrary v. State of Alabama, 8 Div. 636, Jackson Circuit Court Number Cc-81-316

The Court of Criminal Appeals has today granted a stay of sixty (60) days from April 8, 1983, to allow filing of a petition for writ of certiorari in the United States Supreme Court. This stay will remain in effect until action is taken on the petition, and if petition

is granted, until a decision is rendered by the United States Supreme Court.

The certificate of final judgment has been recalled from the lower court pending determination by the United States Supreme Court, but the certificate will be reissued upon the expiration of the sixty-day stay unless this Court is furnished with proof of the filing of said petition in the United States Supreme Court.

Yours very truly,

/s/ Mollie Jordan
Clerk

cc: Clerk, Jackson Circuit Court
Hon. J. Louis Wilkinson, Attorney for Appellant
File

APPENDIX B

JANUARY 4, 1983

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

82-44

Ex Parte: State of Alabama
PETITION FOR WRIT OF CERTIOARI TO THE COURT OF CRIMINAL APPEALS
(Re: Joyce McCrary vs. State of Alabama)

Upon a preliminary examination of the petition in the above cause, the Court concludes that there is a probability of merit in the petition and has today granted the writ.

IT IS, THEREFORE, ORDERED that the writ issue to the Court of Criminal Appeals and that this cause stand ready for submission on briefs or oral argument, if so desired, in accordance with Rule 39, Alabama Rules of Appellate Procedure.

PER CURIAM.
ALL THE JUSTICES CONCUR.

I, Dorothy F. Norwood, as Acting Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of

the instrument(s) herewith set out as same appears on record in said Court.

Witness my hand this 4th day of Jan. 1983.

/s/ Dorothy F. Norwood
Acting Clerk, Supreme Court of Alabama

MAILING ADDRESS: Telephone: 832-6480

P. O. Box 157
Montgomery,Alabama 36101

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

January 31, 1983

Re: 82-44
Ex Parte: State of Alabama
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS
(Re: Joyce McCrary v. State of Alabama)
Appellant Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

____Appeal docketed. Future correspondence should refer to the above number.

____Court Reporter granted additional time to file reporter's transcript to and including

____Clerk/Register granted additional time to file clerk's record/record on appeal to and including

____Appell____ granted 7 additional days to file briefs to and including

____Appellant(s) granted 7 additional days to file briefs to and including

____Record on Appeal filed

____Appendix Filed

xxxxSubmitted on Briefs of Petitioner.

____Petition for Writ of Certioari denied. No opinion.

____Application for rehearing overruled. No opinion written on rehearing.

____Permission to file amicus curiae briefs granted

____

/s/ Dorothy F. Norwood
Acting Clerk, Supreme
Court of Alabama

1-31-83

WO

MAILING ADDRESS: TELEPHONE: 832-6480
P. O. Box 157
Montgomery,Alabama 36101

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

April 8, 1983

Re: 82-44
Ex Parte: State of Alabama
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS
(Re: Joyce McCrary v. State of Alabama)
APPELLANT APPELLEE

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

____ Appeal docketed. Future correspondence should refer to the above number.

____ Court Reporter granted additional time to file reporter's transcript to and including

____ Clerk/Register granted additional time to file clerk's record/record on appeal to and including

____ Appell____ granted 7 additional days to file briefs to and including

____ Appellant(s) granted 7 additional days to file briefs to and including

____Record on Appeal filed

____Appendix Filed

____Submitted on Briefs of Petitioner.

____Petition for Writ of Certioari denied. No opinion.

____Application for rehearing overruled. No opinion written on rehearing.

____Permission to file amicus curiae briefs granted

XXXX WRIT QUASHED AS IMPROVIDENTLY GRANTED; NO OPINION ISSUED.

Shores, J. - All the Justices concur.

/s/ Dorothy F. Norwood
Acting Clerk, Supreme
Court of Alabama

4-8-83

wo

APPENDIX C

CODE OF ALABAMA, 1975
TITLE 20,

§ 20-2-1. Short title.

This chapter may be cited as the Alabama Uniform Controlled Substances Act. (Acts 1971, No. 1407, p. 2378, § 511)

§ 20-2-2. Definitions.

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

...

(5) CONTROLLED SUBSTANCE. A drug, substance or immediate precursor in schedules I through V of article 2 of this chapter.

(6) COUNTERFEIT SUBSTANCE. Substances which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device or any likeness thereof of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance. ...

* * *

§ 20-2-70. Prohibited acts A.

(a) Except as authorized by this chapter, any person who possesses, sells,

furnishes, gives away, obtains or attempts to obtain by fraud, deceit, misrepresentation or subterfuge or by the forgery or alteration of a prescription or written order or by the concealment of material fact or by use of false name or giving a false address controlled substances enumerated in schedules I, II, III, IV and V is guilty of a felony and, upon conviction, for the first offense may be imprisoned for not less than two nor more than 15 years and, in addition, may be fined not more than $25,000.00; provided, that any person who possesses any marihuana for his personal use only is guilty of a misdemeanor and, upon conviction for the offense, shall be imprisoned in the county jail for not more that one year, and in addition, shall be fined not more than $1,000.00; provided further, that the penalties for the subsequent offenses relating to possession of marihuana shall be the same as specified in the first sentence of this subsection.

(b) Any person who violates this section with respect to a counterfeit substance enumerated in schedules I through V is guilty of a felony and, upon conviction, for the first offense may be imprisoned for not less than two nor more than 15 years and may be fined not more than $25,000.00. (Acts 1871, No. 1407, p. 2378, § 401.)

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, an Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Petitioner, do hereby certify that on this _____ day of June, 1983, I did serve the requisite number of copies of the foregoing on the Attorneys for Joyce Glass McCrary, Respondent, by mailing same to them, first class postage prepaid and addressed as follows:

Hon. J. Louis Wilkinson
Attorney at Law
617 Frank Nelson Building
Birmingham, Alabama 35203

Hon. J. Stephen Salter
Groenendyke & Salter
Attorneys at Law
Suite 500, Title Building
Birmingham, Alabama 35203

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

ADDRESS OF COUNSEL:

Office of the Attorney General
250 Administrative Building
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(205) 834-5150